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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
:
:
vs : 12-CR-224
:
:
RICHARD J. HARLEY :
:
:

BEFORE: THE HONORABLE A. RICHARD CAPUTO
PLACE: COURTROOM NO. 3
WILKES-BARRE, PENNSYLVANIA
PROCEEDINGS: MOTION HEARING
DATE: JANUARY 25, 2016

APPEARANCES:
For the United States:
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1 THE COURT: Good morning. We're here on motion for
2 judgment of acquittal and new trial in the case of United
3 States versus Richard Harley. Ready to go?

4 MR. O'BRIEN: Yes, Your Honor.

5 THE COURT: Mr. O'Brien?

6 MR. O'BRIEN: May we proceed from here, Your Honor?

7 THE COURT: Wherever you like. Wherever you're
8 comfortable.

9 MR. O'BRIEN: Your Honor, just by way of background,
10 Mr. Harley was indicted on August 30, 2012, entered a plea of
11 not guilty on October 16th. The case went to trial before Your
12 Honor on December 3rd, 4th and 5th, 8th, 9th, 10th, 11th, 12th
13 and 15th of 2014. Mr. Harley made a motion for judgment of
14 acquittal -- motion for judgment of acquittal at the conclusion
15 of the trial. The jury entered a verdict of guilty on all 23
16 counts.

17 Since that time he's been sentenced, and he's
18 presently serving his sentence at Fort Dix Federal Correctional
19 Institute. He's filed a motion for judgment of acquittal
20 December 30, 2014. And the Court has scheduled oral argument
21 for today. We like to thank the Court for bringing Mr. Harley
22 to this argument. He has some points he would like to make.
23 And so we thank you -- the Court for having him here.

24 Your Honor, the indictment against Mr. Harley
25 contained 23 counts, wire fraud, bankruptcy, fraud, false

1 statements in connection with a bankruptcy and bank fraud. The
2 basis for the charge is three schemes that were used --
3 allegedly used by Mr. Harley to defraud other individuals. The
4 first scheme involved the ownership of oil in Texas. The
5 second scheme involved certain bank instruments drawn on the
6 Federal Reserve Bank. The third scheme involved bankruptcy
7 proceedings.

8 Your Honor, as to the -- the allegations involving
9 the alleged ownership of oil in Texas and the bank instruments
10 from the Federal Reserve Bank, we have asked the Court to enter
11 a judgment of acquittal on the grounds that the evidence was
12 insufficient to prove that Mr. Harley had intent to defraud.

13 These statutes -- these charges were based on 18
14 U.S.C. 1343, which requires a specific intent to defraud. It
15 requires proof that the defendant knowingly and willingly
16 participated in the scheme to defraud and that he, of course,
17 used the mail or interstate wire communications in furtherance
18 of the scheme. We do not dispute the second charge, that the
19 second element that interstate commerce was used. We do
20 dispute whether there was sufficient evidence for a jury to
21 conclude that he had an intent to defraud.

22 The intent to defraud requires knowledge that the
23 defendant must know he that the -- what he's doing is
24 fraudulent and with that knowledge must intend to defraud other
25 individuals. Your Honor, Mr. Harley did not testify at trial.

1 But the only evidence presented at trial as to his intent to
2 defraud came from testimony of two individuals -- the only
3 direct evidence -- Edward Siegel of the State Street Bank and
4 Richard Jones of the Federal Reserve Bank. Those individuals
5 testified that in their opinion that Mr. Harley believed that
6 the Texas oil documents and the federal reserve checks were
7 legitimate and that, therefore, he -- did not have intent to
8 defraud. Based on that, Your Honor, we submit that the wire
9 fraud charges contained in counts one through 15 of the
10 indictment that he should be acquitted on those charges because
11 the record does not contain any evidence other than the fact
12 that he believed that these -- the instruments that he was
13 using would be the -- No. 1, the federal reserve checks or No.
14 2, the instruments -- the oil production notes he believed they
15 were legitimate. He was attempting to monetize them, and he
16 was not guilty of intentionally attempting to defraud anybody.

17 Second, Your Honor, we ask for a judgment of
18 acquittal on the bank fraud charge. That's contained in count
19 23 of the indictment. Here again, Your Honor, the -- the
20 statute requires statute -- 18 U.S.C. 1344 requires intent to
21 defraud a financial institution. The -- again, they involve
22 did -- this count involves the federal reserve checks, two \$500
23 million federal reserve checks. We believe the evidence in
24 this case does not establish -- is not enough sufficient for a
25 jury to conclude that Mr. Harley knew these checks were

1 fraudulent, and, therefore, the judgment of acquittal should be
2 granted.

3 The final aspect, Your Honor, involves the bankruptcy
4 charges. Mr. Harley was involved in the filing of bankruptcies
5 on behalf of his company and also on his own behalf. And the
6 charges are based on 18 U.S.C. 157. They involve if an
7 individual makes a fraudulent representation, claim or promise
8 in conjunction with the proceedings, there could be a criminal
9 liability.

10 On this point, Your Honor, we submit first that Mr.
11 Harley and his company had the right to file bankruptcy
12 proceedings under the constitution and that both he and his
13 company were in substantial debt at the time and, therefore,
14 the filing of the charges was legitimate. There was a basis to
15 file a charge. He had a right to do it. The company was in
16 debt and, therefore, there was -- he should not have been found
17 guilty of bankruptcy with respect to filing of the bankruptcy
18 petitions.

19 The next aspect of the bankruptcy counts -- counts 18
20 to 22 involves the false statements. And the elements of these
21 charges are the existence of bankruptcy proceedings, a
22 statement made thereof as to a material fact that was false and
23 knowingly false. Here we submit, Your Honor, that the
24 statements made in the bankruptcy proceeding were not knowingly
25 false or at least that there was -- they were not -- that he --

1 strike that -- not knowingly false. There was some mistakes
2 obviously in these very complex filings.

3 They were filed pro se by Mr. Harley. We do not
4 believe there's sufficient evidence for the jury to conclude
5 they were knowingly false. The final point to make, Your
6 Honor, is the -- involved the point Mr. Harley feels extremely
7 strongly about, and that is false statement before the grand
8 jury. Mr. Harley did not -- again take the stand during the
9 trial, and the -- one of the issues that was in the case
10 involved the oil note that was the basis for some of the
11 charges.

12 And the question arose whether the original oil note
13 had been in Mr. Harley's possession, and we believe that
14 certain witnesses Dedmon and William Trantham testified falsely
15 about the original note at the grand jury and that we ask for a
16 new trial on that basis. Finally, the question of the evidence
17 at trial involving Mr. Harley's previous involvement in the
18 criminal justice system, there was presented before the jury a
19 letter that had a reference to a criminal case. And that was
20 presented on December 9th, 2014.

21 The document was appropriately redacted before it was
22 given to the jury. And we feel that it entitles Mr. Harley to
23 a fair trial -- to a new trial because it referred to his
24 involvement in a prior criminal case without any basis under
25 the Federal Rules of Evidence. Thank you. Your Honor, Mr.

1 Harley would like to address his own motion. He has a motion
2 for dismissal of the indictment based on perjured testimony
3 before the grand jury. That matter was raised in our motion.
4 Mr. Harley has expanded on his motion. He would like the
5 opportunity to speak on that.

6 THE COURT: All right.

7 THE DEFENDANT: Good afternoon, Your Honor. May I
8 stand?

9 THE COURT: No, you don't have to.

10 THE DEFENDANT: Okay. First and foremost, I sent
11 this motion in to Your Honor because I felt Your Honor should
12 see what went on at the grand jury. After going through the
13 grand jury transcripts myself, I found that perjured testimony
14 and suborn perjury was absolute at the grand jury level. And I
15 balanced that all with the transcripts and the 302 statements
16 from the F.B.I.

17 Going to Stan Dedmon, who was the president of the
18 oil company in Texas, he was asked at the grand jury, have you
19 sent the original copy of the note to anyone, to Mr. Harley,
20 Christie Bower or anyone else. His answer was no. And but on
21 the F.B.I. statement in 2000 -- no, let me go back further. He
22 said, where is the original copy of the note now. He said --
23 Mr. Dedmon said, if we can find it, it is in the records in
24 William Trantham's file systems somewhere or may I say to you
25 that maybe my memory wants to say that I think I gave that to

1 the young man from the F.B.I. back in 2003 or whatever that
2 when they had -- when Mr. Harley was being prosecuted in
3 Alabama or whatever that was. Dedmon on this 302 statement
4 that he gave to the F.B.I. which was in 2000, not 2003, Dedmon
5 confirmed that Enpetro executed a \$200 million promissory note
6 to R. H. J. and Company dated 9/24/97. He identified his
7 signature on the assignment collateral, which secured the \$200
8 million note with the Brown County oil reserves. Dedmon said
9 the note, the assignment of collateral and engineering report
10 prepared by Philip Avery of Abilene, Texas to Harley in
11 Pennsylvania via Federal Express mail. And that really
12 bothered me because they were all -- Mr. -- the A.U.S.A. was
13 alleging that I had not received the original documents, that I
14 did not own any oil.

15 But back in 2000, Mr. Dedmon -- he went on saying he
16 sent it to me via Federal Express mail. They are going to Mr.
17 Trantham, his corporate secretary and treasurer, the same
18 questions basically was asked at the grand jury. You don't
19 have -- he said to Mr. Trantham at the grand jury -- the
20 question was, you don't have any copies of this correspondence,
21 and his answer was, we thought this thing was going dead and we
22 buried the paperwork in the landfill six or seven years ago.

23 Then he goes on to say, question, was the original
24 note to your knowledge tendered to Mr. Harley, answer, no. Did
25 you know where the original is, answer, no. Have you attempted

1 to locate it. Answer, yes, well, I believe the original note
2 does not exist. I think it went to a landfill. Well, Mr.
3 Dedmon said that he thought it was in Trantham's file, and now
4 Trantham said that he thinks it went to the landfill. But in
5 2000 now to the same F.B.I. Mr. Horton -- Herton, I'm sorry -
6 H-e-r-t-o-n -- Trantham identified his signature on the \$200
7 million promissory note payable to R. H. J. and Company dated
8 9/24/97 secured by the Brown County Town Oil Reserves, R. J. H.
9 was owned by Richard Harley. Trantham does not recall the
10 purpose of the note but believes it was used to raise capital.
11 He does not know that Enpetro never received any consideration
12 from R. J. H. for the note.

13 Then he goes on to say, Trantham told Harley that the
14 note was cancelled and if he presented it to a financial
15 institution he would tell them that the note was worthless.
16 Trantham has attempted to get the original note -- the original
17 note back from Harley but has been unsuccessful. Well, he made
18 -- I never talked to Trantham. That's No. 1. I never talked
19 to him on the phone at all. I talked to Mr. Dedmon a couple
20 times. But Trantham said he talked to me about having a
21 worthless note. But he went on to say I had the original note
22 which they said I never had. So that was a lie at the grand
23 jury.

24 THE COURT: Wait a minute. You got me confused.

25 THE DEFENDANT: Pardon me?

1 THE COURT: Go back on Trantham again. He -- wait.
2 He told the grand jury that the note was in a landfill?

3 THE DEFENDANT: Yes.

4 THE COURT: And in the 302 he says that he told you
5 that it was worthless?

6 THE DEFENDANT: Yes. But he tried to get the
7 original note back but was unsuccessful.

8 THE COURT: What difference does that make?

9 THE DEFENDANT: The note original was sent to me.
10 That's --

11 THE COURT: What difference does that make if he told
12 you it was worthless?

13 THE DEFENDANT: He never told me that. That's my
14 point. My point is --

15 THE COURT: There's no evidence of that except what
16 you say now, correct?

17 THE DEFENDANT: That is true.

18 THE COURT: All right.

19 THE DEFENDANT: My point is this, Your Honor. They
20 saying I never had the original documents. That's what they
21 said in the grand jury -- the grand jury and the indictment
22 that I never had the original oil papers. And that was a lie.
23 I always had them. Christie Bower has had them for a number of
24 years holding them in safe keeping. I have the safe keeping
25 receipts here from Christie Bower stating that she was holding

1 the originals in the Melon Bank in a safe deposit box, okay.

2 She went on to say that --

3 THE COURT: Have you given the original note to the
4 United States attorney?

5 THE DEFENDANT: United States attorney --

6 THE COURT: So that you can determine whether they
7 wish to do anything about the testimony that you say is false?

8 THE DEFENDANT: The original notes was taken by Mr.
9 -- the agent when he came to my house. He found them. And, in
10 fact, he gave me -- I wish I had it here -- he gave me a
11 statement stating that on this 302 that he said -- I'm trying
12 to remember correctly. But he said something to the effect
13 that he found -- found -- I am trying to remember how he said
14 it now -- an original looking document or note -- note and
15 collateral of assignment he found, and he said he may be aware
16 of that fact. Something like that he said. But his agent was
17 downstairs in my downstairs bedroom in my closet where it was,
18 and it was in a brown eel skin brief case. And it was -- when
19 he opened it up, you see it was a plastic folder in there that
20 kept it secure, kept it so it won't get damaged. He came
21 running upstairs. He remember what he said to Mr. Browning.
22 Mr. Browning, I think I found it. Mr. Browning opened it up,
23 and he said -- and he told me -- to my face -- he said, yes,
24 this looks like the original. That's what he said to me. So
25 they have them now.

1 They've had them ever since they came to my house.
2 Why they didn't show Mr. Brandler the originals is beyond me.
3 I always had them. Don Kesterson would never gave a certified
4 report if I didn't have the original documents. He said that
5 in his testimony basically. He said that Christie Bower
6 verified to him in writing and sent copies of the safe keeping
7 receipts she was holding the original documents for me.

8 THE COURT: I don't understand what is false about
9 the testimony. The testimony to the grand jury was the
10 Trantham told you that it was worthless.

11 THE DEFENDANT: No, that was -- that wasn't in the
12 grand jury's statement, Your Honor.

13 THE COURT: It was the 302.

14 THE DEFENDANT: In the 302 back in 2000. What he
15 said at the grand jury, he said -- the question was asked, did
16 you ever send Mr. Harley the original note or collateral
17 assignment. The answer was no. That was asked of Trantham,
18 and that was asked of Dedmon. Did you ever send the original
19 note or the collateral assignment to anyone, Christie Bower or
20 anyone else. The answer was no, a flat no.

21 When I've always had the originals. Having the
22 originals -- by the way, Your Honor, the same -- during that
23 same period, I received a letter that was in the discovery that
24 Mr. Browning -- Mr. Brandler has sent my attorney from the
25 United States Attorney's Office in Alabama and from -- from --

1 Alice H. Morton, United States attorney, she wrote this letter
2 to Mr. -- Ms. Thornton, who is the -- Ms. Thornton was the
3 special agent in charge of the Federal Bureau of
4 Investigations. She said the United States Attorney's Office
5 declines prosecution of Richard J. Harley due to insufficient
6 evidence. That's because she heard that Stan Dedmon and
7 William Trantham sent me the original documents because if I
8 had the original documents, there is no crime. There can't be
9 a crime.

10 THE COURT: Why?

11 THE DEFENDANT: I own them. I own the oil just like
12 it was purported to be. My company -- my company owns that oil
13 and always -- and still owns the oil.

14 THE COURT: The question was whether you knew -- not
15 only -- there's two possibilities, right. One is that notes
16 were bogus because they were created. The other is that the
17 note might have been real but that you knew it was worthless.

18 THE DEFENDANT: No, sir. Those weren't worthless.

19 THE COURT: I am not arguing the point whether they
20 were or not. I'm saying what could the jury conclude.

21 THE DEFENDANT: The jury never heard they were
22 worthless except from Mr. Brandler. Mr. Brandler said that.
23 The two witnesses they said anything at the grand jury, they
24 weren't here to testify.

25 THE COURT: All right. I understand your point. I

1 understand your point.

2 THE DEFENDANT: All I am saying, Your Honor, is that
3 the grand jury was perjured by those two gentlemen that said
4 they never sent me the original documents. That's a lie.

5 THE COURT: I got it. I understand your point.
6 Anything else?

7 THE DEFENDANT: I went on to say in my -- oh, Don
8 Kesterson said -- I think I mentioned to you said that he had
9 it verified by Christie Bower and then -- let me see -- on I
10 mentioned false statements that Mr. Brandler mentioned to the
11 grand jury about an automobile -- one of the questions was --
12 let me read it to you if I may, Your Honor, what he said at the
13 grand jury testimony about the automobile. It's right here.

14 One of the jurors asked Mr. Brandler what was the
15 money used for, and the answer, the money was used for what
16 appears to be personal expenses, and I believe -- and I -- I
17 will happy to go over some of them but the high points is a
18 \$45,000 automobile. So they were personal expenses. His
19 answer was, personal expenses, yes. But -- in Brandler's brief
20 document, 202 on the footnote, July 1, 2015, page 38 of 46, he
21 stated to Mr. Fergie, he testified the 2008 Lexus was valued at
22 \$40,000 and titled in the name of R. J. H. And I also sent him
23 a copy of the registration that states that it was in R. J. H.
24 and Company's name. That was a false statement.

25 THE COURT: What was false?

1 THE DEFENDANT: He told the grand jury all the money
2 was used for personal expenses, car, the car was personal. The
3 car was titled in the company's name.

4 THE COURT: So you're making a distinction between R.
5 J. H. and you?

6 THE DEFENDANT: No, all I am saying is that -- well,
7 yes, in that regard yes because the personal expenses would be
8 something that, you know, I personally --

9 THE COURT: I understand that. I understand.

10 THE DEFENDANT: Okay. He's saying here -- he's
11 saying here that the money was used for -- all the money was
12 used for personal expenses, even the car. But he forgot Mr.
13 Fergie told him the car was titled in R. J. H. and Company's
14 name.

15 THE COURT: What difference does that make? Who
16 drove the car?

17 THE DEFENDANT: I did.

18 THE COURT: In pursuit of what?

19 THE DEFENDANT: Driving the car?

20 THE COURT: Yeah.

21 THE DEFENDANT: I drove the car on a daily basis.

22 THE COURT: In pursuit of what?

23 THE DEFENDANT: I don't quite understand your
24 question, Your Honor.

25 THE COURT: Business of R. J. H?

1 THE DEFENDANT: Absolutely, absolutely.

2 THE COURT: I see. I got it.

3 THE DEFENDANT: These statements are false, okay.

4 And Mr. Brandler said -- another false statement was made when
5 A. S. U. A. Brandler was -- page 38, line 13 to 18. He stated
6 in part documents provided by grand jury subpoena for Mr.
7 Kesterson, extensive documents stated I have seen nothing
8 indicating ownership in oil in those documents by Mr. Harley.

9 Now, Don Kesterson certified report on page four,
10 paragraph four states based on the wording of the collateral
11 assignment in my opinion Enpetro must maintain these oil
12 reserves on behalf R. J. H. and Company, Inc., and then on his
13 analysis report of oil reserves in Brown County Texas dated
14 July 3rd, 1999, very first paragraph he states, third line,
15 pertaining to your oil promissory note and collateral
16 assignment from Enpetro states -- in other words, he said that
17 there was nothing in Donald's report that stated I -- my
18 company owned any oil, which it did. I just proved that.

19 All I am saying is -- there is a lot more false
20 statements that were made to the grand jury, Your Honor. I
21 could have just -- I took -- I took out the high points.
22 Especially me not having the original documents in my
23 possession was the big key because without that again -- if I
24 hadn't had the documents, it would be fraud. But having the
25 ownership of those paperwork, it doesn't make this fraud at

1 all. Ownership is not against the law. I owned those
2 documents since 1997 and still own them. So all I am saying
3 the grand jury, yes, was perjured absolutely.

4 THE COURT: All right. Anything else?

5 THE DEFENDANT: I sent these documents to my attorney
6 here four times, and he did mention it slightly in the judgment
7 of acquittal that statements that were made were inconsistent,
8 but he didn't come out and say it was perjured testimony like
9 I. That's what it is. I checked the law out. The law states
10 that anything that what they call material -- material to the
11 proceedings the indictment must be dismissed. And these were
12 material.

13 Having the oil -- the oil documents in my possession
14 and ownership of it is definitely material to the proceedings.
15 That's my point.

16 THE COURT: I understand your point. All right.

17 THE DEFENDANT: The only thing I can add to that is I
18 feel as though my due process has been violated because of
19 again, these perjured testimony to the grand jury. I think
20 they would have come to a different conclusion. If they had
21 said, yes, they sent the oil to me and the collateral
22 assignment to me, I think the grand jury proceedings would have
23 been different because that shows ownership. There can't be
24 any fraud when someone owns something. Even if they are trying
25 to establish or borrow money on it, that's not fraud. At best

1 it's civil, not fraud. And this is what I am saying, and it's
2 clear. It's clear that this was what happened to me.

3 THE COURT: Do you want to address your ineffective
4 assistance of counsel?

5 THE DEFENDANT: Yes, I believe that if Mr. O'Brien
6 had come before the Court with this in the beginning, I don't
7 think there would have been -- I don't think there would have
8 been a trial, Your Honor. I really believe that because again,
9 the grand jury was the key for the indictment. The only way I
10 could have gone to trial is having an indictment against me,
11 correct?

12 THE COURT: That's right.

13 THE DEFENDANT: And if he had come through in the
14 beginning before this all -- before the trial got started I
15 don't think there would have been one because we could have
16 addressed and fine tuned it and went into it deeper. There's a
17 lot more to that grand jury transcript that I just -- I just
18 wanted to highlight the best points especially with the oil.

19 That was the whole basis of the whole scheme of the
20 indictment. They even called it that, the oil scheme. And he
21 said in the indictment that I didn't own any oil, that
22 everything I was doing was false. And, in fact, my company
23 does own the oil, Your Honor. That is since 1997. And, in
24 fact, even -- there was other things that happened during that
25 period that they even -- what happened with Mr. White -- Edwin

1 white one who helped me get the oil for the company that I had
2 back then, and we were working on some things at that time.
3 But I've always had the oil in my possession. Until this day I
4 own the oil. And I think the indictment should have said that
5 the oil was owned by R. J. H. and Company and not saying
6 everything we have is false because that hurt. That hurt a
7 lot. And again, that's material to the proceedings, owning the
8 oil. That's all part of the oil scheme. Had he said that we
9 wouldn't be here today like this.

10 THE COURT: All right. Anything else?

11 THE DEFENDANT: I did say that Mr. O'Brien had filed
12 meritorious defenses in my behalf -- especially based on the
13 oil, this matter would have never gone to the grand jury the
14 way it did or we would never had had a trial. That was one of
15 the main things, too. The suborn perjury and perjured
16 testimony is there. It's in black and white, Your Honor. I
17 tried to explain the best way I could. I'm not an attorney,
18 but the facts don't lie. The facts are what they are.

19 THE COURT: Okay.

20 THE DEFENDANT: Other people seen the same thing.
21 They seen that. They say it's definitely perjury.

22 THE COURT: All right. Thank you. Mr. Brandler?

23 MR. BRANDLER: Your Honor, the government filed a
24 lengthy response to the motion, and I am not going to belabor
25 the entire response. I'm just going to raise a number of

1 points that have been addressed this morning. That's document
2 202 in the -- in the docket records, and we will incorporate
3 that by reference. I will reiterate the standard that the
4 Court uses to judge this judgment -- rule 29 motion for
5 judgment of acquittal and new trial. It's a very heavy burden
6 on the defendant.

7 The record must be viewed in the light most favorable
8 to the prosecution to determine whether any rational trier of
9 fact could have found guilt beyond a reasonable doubt. It's a
10 very differential standard. The Third Circuit has admonished
11 district courts not to usurp the purpose the role of the jury
12 in that respect. Rule 33 being the more stringent standard of
13 this miscarriage of justice standard.

14 Basically, what's -- the focus of the argument at
15 least on Mr. O'Brien's point was insufficient evidence based on
16 Mr. Harley's state of mind relating to all of the counts in the
17 indictment. And we would submit there was more than sufficient
18 evidence in the record to establish Mr. Harley's state of mind.
19 First of all, we would point out at the close of the
20 government's case Mr. O'Brien made a motion for a judgment of
21 acquittal, which was denied by the Court based upon the record
22 as of that time.

23 There's nothing that has happened -- that happened on
24 the defense case that would warrant the Court to reconsider its
25 judgment at the conclusion of the government's case. Second of

1 all, state of mind is generally proven through circumstantial
2 evidence.

3 The Third Circuit has repeated it on many occasions
4 that circumstantial evidence is sufficient and that it's
5 usually the case that it cannot be proved by direct evidence.
6 But in this particular case, we did have direct evidence of Mr.
7 Harley's state of mind. At least related to the bank fraud
8 scheme he was told on repeated occasions by federal reserve
9 officials that what he was doing was illegal, that it was a
10 known scam to the Federal Reserve Bank, and despite those
11 admonitions he continued to pedal those bank notes to investors
12 to the Federal Reserve Bank and institutions and tried to
13 negotiate those notes.

14 So -- in that case, there was direct evidence of Mr.
15 Harley's state of mind. Regarding the oil scheme, there was
16 more than sufficient evidence regarding his state of mind that
17 he knew that this was bogus. First of all, the original note
18 that he complains so vocally about this morning and in his
19 motion papers -- the Court will recall there were five original
20 notes found in his home, not one original note. A rational
21 jury could infer from that that Mr. Harley was fabricating and
22 creating those original notes.

23 If he wanted to establish through Mr. Dedmon or Mr.
24 Trantham that he, in fact, had one or more original notes in
25 this case, he could have called Mr. Dedmon and Mr. Trantham to

1 the stand. He those not to do so. The evidence that the jury
2 had he had in his possession five -- what appeared to be five
3 original notes based on a company called Enpetro, that did not
4 prove that he owned any oil. The note itself only showed that
5 a company called Enpetro owed him \$200 million. It didn't say
6 anything about ownership of oil.

7 The Court will recall during the trial we had a
8 witness -- a lawyer from Texas who was familiar with title
9 ownership of oil wells who said conclusively he had done a
10 title search of this oil and neither R. J. H., Mr. Harley or
11 Mr. Dedmon and Mr. Trantham for that matter owned any of the
12 oil Mr. Harley was claiming to own. So even, you know, his
13 claim this morning that the fact he had an original oil note
14 shows that he owned the oil is belied by the evidence.

15 But there's more circumstantial evidence that he knew
16 the oil note was bogus. No. 1, he never gave Enpetro anything
17 in exchange for this \$200 million note. The records that he
18 read this morning from the grand jury and from the 302s, the
19 interview reports, indicate that there was no consideration
20 given, that it was just simply given to Mr. Harley as a means
21 so he could use that bogus note to get loans from various
22 financial institutions to set up these AIDS clinics he was
23 trying to set up in the early 90s.

24 It was not a legitimate note at that time as he well
25 knew. It was a basically the start of a hypothecation fraud

1 that he started back in the early 90s regarding his AIDS
2 clinics. There was also evidence that he lied to Mr. Kesterson
3 regarding the production on the wells. Mr. Kesterson gave him
4 an opinion stating that the only thing that that note or
5 collateral gave him the rights to was the oil -- the production
6 of the oil once it reached the ground, and Mr. Harley told him
7 that there was production in those wells as of 1999 when he
8 gave him the paperwork when, in fact, there had been no
9 production on those wells since much earlier in the 1990s.

10 We found during the search warrant in addition to the
11 five what appeared to be original notes, many documents related
12 to hypothecation fraud. That is where somebody uses what
13 appears to be a legitimate asset but it's really a bogus asset
14 to get financial institutions and others to give them or lend
15 them money. A rational jury could have concluded that Mr.
16 Harley was using this note as part of the hypothecation fraud.
17 He also promised many of these investors that he was going to
18 use the proceeds of their money, their investments, for
19 business purpose, to extract the oil for instance. That's what
20 he told Mr. Silverstein. In fact, when he got their money he
21 never used any of their money for any business purpose.

22 He just used the money for personal expenses whether
23 it was to buy an automobile that he drove for day-to-day
24 purposes, to pay his mortgage, for household expenses. He lied
25 about his education and background. He lied throughout the

1 entire scope of his relationship with all of the investors
2 which a rational jury could conclude that he had intent to
3 defraud on both the oil scheme and the bank fraud scheme. I
4 would just jump ahead to Mr. Harley's argument regarding
5 perjury in the grand jury.

6 Your Honor, I cite to the Court the case of the
7 United States versus Morgan, 384 F.3rd 439. It's a case from
8 the 7th Circuit Court of Appeals from 2005. I have a copy for
9 the Court and for defense counsel. I just want to read one
10 section into the record because the same allegation was made in
11 that case where a defendant claimed that perjury in the grand
12 jury somehow entitled him to a new trial or a judgment of
13 acquittal, and this is what the Court said.

14 We turn now to Morgan's remaining arguments. First
15 he accuses the government of using perjured testimony before
16 the grand jury to obtain his indictment. His argument suffers
17 from a number of false notably that it was never raised in the
18 district court and lacks any support in the record. Most
19 significantly the petit jury's guilty verdicts render harmless
20 any possible error in the grand jury proceedings. So even
21 assuming there was perjury in the grand jury, the petit jury's
22 verdict would cure any problems that took place in the grand
23 jury.

24 We don't agree that there's been any perjury
25 established from Mr. Dedmon and Mr. Trantham. Mr. Harley can

1 claim that there was perjury. All we have in the record is
2 that they claim they never gave an original note to Mr. Harley.

3 And what we found in Mr. Harley's possession was what
4 appeared to be five original notes not knowing if any of them
5 were legitimate at all. So there was maybe a potential
6 inconsistency but no evidence of perjury there. But as I
7 stated, this was not an issue that was raised prior to trial.
8 He could have called Mr. Dedmon and Mr. Trantham during the
9 course of this case. He had the grand jury transcripts in
10 discovery. He choose not to call them.

11 So the -- even assuming there was perjury, it would
12 not be grounds for a new trial or judgment of acquittal.
13 Regarding the allegation that there was documents shown to the
14 petit jury that indicated Mr. Harley's involvement with the
15 criminal justice system on a prior occasion, that was briefed
16 in my papers. I won't go over it. But defense counsel did not
17 request a curative instruction during the trial. As a matter
18 of fact, there was no objection raised to the item during the
19 course of the trial.

20 And it's unclear whether any jurors even saw it or
21 could have connected the dots to make -- infer that Mr. Harley
22 had been previously convicted. I cited a number of cases from
23 the Third Circuit which indicates much worse information going
24 to a petit jury that has not been cause for a new trial. So
25 based upon all of those items, we think the motion for judgment

1 of acquittal and new trial should be denied. Thank you.

2 THE COURT: Thank you. Mr. O'Brien?

3 MR. O'BRIEN: I have nothing further, Your Honor.

4 THE DEFENDANT: Your Honor, I disagree with him --
5 Mr. Brandler profusely when he said that first and foremost he
6 said that I never had the original notes. That's a lie. They
7 said they sent the original notes to me, F.B.I. 302 statements.
8 If the F.B.I. 302 statement doesn't mean anything, I need to
9 know that.

10 Martha Stewart went to jail for testifying before the
11 F.B.I. falsely. Now, these gentlemen said to the F.B.I. in
12 2000 that they sent me the original oil note and the original
13 collateral assignment. I have it here from the Mr. Hertton -- I
14 think his name was. Mr. Brandler said that -- he went on to
15 say some things about my background, my education. I never
16 said anything about my education. He's talking about
17 education. I got an honorary Ph.D. from the Inventor's Club of
18 America. The F.B.I. saw all those plaques I have got.

19 They saw them. They took pictures of them -- and
20 then going back to the degree, they have -- there were five --
21 no, four copies that look like the original because what I did
22 is took the original, Your Honor, and I made copies of them in
23 color, but it was a different type paper even. Mr. Browning,
24 F.B.I. found the originals downstairs in my lower basement --
25 I'm sorry, lower bedroom on a shelf in a brief case. If Mr.

1 Brandler was here -- in fact, Mr. O'Brien was sent a 302
2 statement by Mr. Browning through my wife just a couple days
3 ago.

4 He doesn't have it here unfortunately that states
5 that he found what looks like an original. Mr. Browning said
6 that, just the one, not five in his 302 statement. I wish I
7 had it here because that's important. I -- my wife sent it to
8 Mr. O'Brien. He forgot to bring with him. I would like to
9 have him fax it to you to show that Mr. Browning found the
10 original in my basement -- in my lower bedroom like he said he
11 did.

12 So I don't know where Mr. Brandler is coming off that
13 the grand jury wasn't lied to. My gosh, a blind person can
14 see. The facts are there. You asked the question. Did you
15 send the original. They both said no. But then in 2000 they
16 said they sent the original to me. Now, 1997 is when I got it.
17 1997 to 2000 only three years. I would imagine now they would
18 remembered what happened three years from 1997. But again he
19 keeps saying they never sent me the originals, and that's a
20 lie. That's a lie. That's a shame he would say something like
21 that after 302 statements -- he sent me the 302 statements. He
22 should have known that. Mr. Brandler sent me the 302
23 statements in his discovery from these two gentleman from 2000.
24 He saw it then. He's still saying that I never had the
25 originals.

1 MR. BRANDLER: The point is the jury -- the petit
2 jury never heard the testimony that was in the grand jury that
3 they sent -- they never sent him the original.

4 THE COURT: I am aware of that.

5 THE DEFENDANT: That may be. But you knew it. You
6 knew it. And I think it goes on to say that you knew or should
7 have known that the originals was sent to me, and you should
8 have said that to the grand jury because you had these
9 documents there. That's what I'm saying. It was a lie. It's
10 still a lie. It's got to stop because I did nothing wrong. I
11 did everything by the book.

12 And by the way, I never once said that I was trying
13 to extract oil because my collateral assignment doesn't give me
14 the right to extract oil. We only owned the oil that's in the
15 ground. That's all we own. So I don't know where that came
16 from that we needed -- we needed money to extract oil. You
17 won't find a piece of paper anywhere that says anything about
18 my company wanting to extract oil, Mr. Brandler. Did you find
19 anything like that --

20 THE COURT: We're off the beaten track now.

21 THE DEFENDANT: I know, Your Honor. I'm sorry.

22 THE COURT: Let's not --

23 THE DEFENDANT: I'm sorry.

24 THE COURT: Anything else on these motions? I
25 understand your point. I do.

1 THE DEFENDANT: I appreciate that. I really do
2 because this is frustrating to me right now. You can see pure
3 as day that the grand jury was lied to, and he wants to twist
4 it around again to make it seem as though that didn't happen.
5 My goodness, like I said before, a blind person can see it,
6 Your Honor. They were lied to. It's as simple as that. The
7 matter will not stop here. I will get to the bottom of it
8 because they were lied to.

9 THE COURT: All right. Okay. Anything else?

10 MR. O'BRIEN: Nothing further, Your Honor.

11 THE COURT: Mr. Harley?

12 THE DEFENDANT: Nothing else, Your Honor.

13 THE COURT: Mr. Brandler?

14 MR. BRANDLER: No, Your Honor.

15 THE COURT: All right. Thank you all. And you will
16 hear from me soon. We're adjourned.

17 THE DEFENDANT: Your Honor, can I have Mr. O'Brien
18 send you a copy of Mr. Browning's 302 statement where he said
19 he saw what looks like the original, he found that just that
20 one with -- would you like that?

21 THE COURT: No, I don't need that. I hear your
22 point. I mean, I don't know what is that going to do for you.

23 THE DEFENDANT: Show that the original -- we had the
24 originals, and we have the originals, Your Honor -- with the
25 originals, Your Honor, there is no crime. That's all I'm

1 saying.

2 THE COURT: Well, didn't -- who said they were five
3 originals?

4 MR. BRANDLER: Mr. Browning testified at trial that
5 he found what looked like five originals.

6 THE COURT: That's what I thought. So --

7 THE DEFENDANT: Looks like it, yes, he did say that.

8 THE COURT: That's the testimony at trial. That's
9 all I have to deal with. It's testimony at trial.

10 THE DEFENDANT: How about the grand jury transcripts?

11 THE COURT: What about it?

12 THE DEFENDANT: Where they were asked the question
13 whether or not the originals was sent. I sent --

14 THE COURT: You're talking about Trantham and Dedmon?

15 THE DEFENDANT: Yes.

16 THE COURT: You made that point. Mr. Brandler has a
17 case that indicates that even if the grand jury was -- was not
18 told the truth the jury verdict trumps that.

19 THE DEFENDANT: I have a case here that says just the
20 opposite.

21 THE COURT: Where is that case from?

22 THE DEFENDANT: United circuit in California.

23 THE COURT: Do you have a cite?

24 THE DEFENDANT: Yes, it's -- the judge -- he really,
25 really laid into it. Your Honor, maybe I can have -- maybe so

1 you can see the cite number, a very good case, strong case.
2 Basically the same thing that happened in that case that
3 happened to me. They had a trial, but fortunately -- while the
4 jury was deliberating, that's when they came in with the --

5 THE COURT: All I want is the cite. Is there no
6 note?

7 THE DEFENDANT: There's no cite.

8 MR. BRANDLER: I think it's 2011 Lexis 138431.

9 THE COURT: I don't need that. I will -- we will
10 look it up.

11 THE DEFENDANT: Very strong case, Your Honor.

12 THE COURT: You say it's from the Ninth Circuit.

13 THE DEFENDANT: Yes, yes, sir.

14 THE COURT: Okay.

15 THE DEFENDANT: There was one other too, if I may,
16 Your Honor.

17 THE COURT: Go ahead.

18 THE DEFENDANT: This is Coleman versus Thompson, 501
19 U.S. 722, 750, 115, L. Ed. Sec. 640, 1115, C. E. -- 2546, 1991.
20 That case I just gave you gives a lot of cases in it for you to
21 read, Your Honor, about what happened to them. It's a strong
22 case here.

23 THE COURT: All right. Thank you.

24 MR. O'BRIEN: Your Honor, may I make one point,
25 please? Mr. Harley made a point about a 302 not being here.

1 Well, that is in the record, Your Honor. It's Mr. -- Mr.
2 Harley filed a motion for dismissal November 19th, 2015.
3 Exhibit B. to that motion contains the testimony of Mr.
4 Browning before the grand jury. It also contains -- I'm sorry,
5 Mr. Trantham before the grand jury and also contains the 302 of
6 9/5/2000 dealing with the original promissory note. So those
7 documents are in Mr. Harley's motion.

8 THE DEFENDANT: They are. Yes, they are, Your Honor.

9 THE COURT: All right.

10 THE DEFENDANT: Please look at them, Your Honor.

11 THE COURT: I think I have seen them, all right.

12 Anything else?

13 MR. BRANDLER: No, Your Honor.

14 THE COURT: All right. We're adjourned. Thank you.

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REPORTER'S CERTIFICATE

I, LAURA BOYANOWSKI, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

Laura Boyanowski, RMR, CRR
Official Court Reporter

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United States District Court
Middle District of Pennsylvania
Scranton, PA 18503

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